



## Idaho Department of Environmental Quality Draft §401 Water Quality Certification

April 28, 2017

**404 Permit Application Number:** NWW-2017-084-B03

**Applicant/Authorized Agent:** River Flat Ditch Co.

**Project Location:** Latitude 43.795116°, Longitude -116.98408°. In Canyon County near Parma, Idaho.

**Receiving Water Body:** Boise River

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Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review activities receiving Section 404 dredge and fill permits and issue water quality certification decisions.

Based upon its review of the joint application for permit, received on March 13, 2017, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the activity will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

This certification will remain in effect until December 31, 2017 at which time construction must be complete.

### Project Description

This bioengineering bank stabilization project will secure 630 linear feet of failing river bank. Treatments consist of constructing 4 to 5 5-foot wide by 20-foot long by 5-foot high rock bank barbs along the outside bend of the right descending river bank. The Project includes three bioengineering techniques between the bank barbs: log-rock joint, willow clump plantings, brush slope fascines above the ordinary high water mark and planting upland native vegetation.

The Army Corps of Engineers and Idaho Department of Water Resources authorized emergency bank stabilization on this project under their authorities. This project will require the applicant to remove the emergency work when flows subside and construct improvements as per the application reviewed for this certification.

## Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- **Tier I Protection.** The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- **Tier II Protection.** The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- **Tier III Protection.** The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier I protection for that use, unless specific circumstances warranting Tier II protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

## ***Pollutants of Concern***

The primary pollutant of concern for this project is sediment. As part of the Section 401 water quality certification, DEQ is requiring the applicant comply with various conditions to protect water quality and to meet Idaho WQS, including the water quality criteria applicable to sediment.

## ***Receiving Water Body Level of Protection***

This project is located on the Boise River within the Lower Boise River Subbasin assessment unit (AU) 17050114SW001\_06 (Boise River - Indian Creek to mouth). This AU has been designated for cold water aquatic life and primary contact recreation beneficial uses. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

According to DEQ's 2012 Integrated Report, this AU is not fully supporting one or more of its assessed uses. The aquatic life use in this receiving water body AU is not fully supported. Causes of impairment include low flow alterations, physical substrate habitat alterations, sediment/siltation, temperature, *Escherichia coli* and total phosphorus. The contact recreation beneficial use is also not fully supported. Causes of impairment include *Escherichia coli*. As

such, DEQ will provide Tier I protection for both the aquatic life and contact recreation uses (IDAPA 58.01.02.051.01).

The only pollutant of concern associated with this project is sediment, but sediment is not relevant to recreational uses; therefore, it is unnecessary for DEQ to conduct a Tier I review for this AU because this project will not create impacts that could affect the recreation use.

### ***Protection and Maintenance of Existing Uses (Tier I Protection)***

As noted above, a Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. The numeric and narrative criteria in the WQS are set at levels that ensure protection of existing and designated beneficial uses.

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a total maximum daily load (TMDL) must be prepared for those pollutants causing impairment. Once a TMDL is developed, discharges of causative pollutants shall be consistent with the allocations in the TMDL (IDAPA 58.01.02.055.05). Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04).

During the construction phase, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) directed toward reducing erosion and minimizing turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented, which will minimize or prevent future sediment contributions from the project area. Specifically, the applicant will install the log-rock joint revetment, willow clumps and brush fascines during low flow to minimize sediment disturbance. The project will also slope the vertical bank to a 2:1 ratio reducing potential for bank scour and mass failure.

As long as the project is conducted in accordance with the provisions of the project plans, Section 404 permit, and conditions of this certification, then there is reasonable assurance the project will comply with the state's numeric and narrative criteria. These criteria are set at levels that protect and maintain existing and designated beneficial uses. In addition, the project will be consistent with the *Lower Boise River TMDL, 2000*. This project will comply with the sediment and bacteria TMDL by stabilizing a rapidly eroding streambank and eliminating the contribution of total suspended sediments and any associated nutrient and bacteria loads from entering the river.

There is no available information indicating the presence of any existing beneficial uses aside from those that are already designated and discussed above; therefore, the permit ensures that the level of water quality necessary to protect both existing and designated uses is maintained and protected in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

## Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

### ***General Conditions***

1. This certification is conditioned upon the requirement that any modification (e.g., change in BMPs, work windows, etc.) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.
2. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that, due to changes in relevant circumstances—including without limitation, changes in project activities, the characteristics of the receiving water bodies, or state WQS—there is no longer reasonable assurance of compliance with WQS or other appropriate requirements of state law.
3. If ownership of the project changes, the certification holder shall notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to another person or party. The new owner/operator shall request, in writing, the transfer of this water quality certification to his/her name.
4. A copy of this certification must be kept on the job site and readily available for review by any contractor working on the project and any federal, state, or local government personnel.
5. Project areas shall be clearly identified in the field prior to initiating land-disturbing activities to ensure avoidance of impacts to waters of the state beyond project footprints.
6. The applicant shall provide access to the project site and all mitigation sites upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.
7. The applicant is responsible for all work done by contractors and must ensure the contractors are informed of and follow all the conditions described in this certification and the Section 404 permit.
8. If this project disturbs more than 1 acre and there is potential for discharge of stormwater to waters of the state, coverage under the EPA Stormwater Construction General Permit *must* be obtained. More information can be found at <http://yosemite.epa.gov/R10/WATER.NSF/NPDES+Permits/Region+10+CGP+resources>.

### ***Fill Material***

9. Fill material subject to suspension shall be free of easily suspended fine material. The fill material to be placed shall be clean material only.
10. All temporary fills shall be removed in their entirety on or before construction completion.
11. Excavated or staged fill material must be placed so it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled.

## ***Erosion and Sediment Control***

12. BMPs for sediment and erosion control suitable to prevent exceedances of state WQS shall be selected and installed before starting construction at the site. One resource that may be used in evaluating appropriate BMPs is DEQ's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties*, available online at <http://www.deq.idaho.gov/media/494058-entire.pdf>. Other resources may also be used for selecting appropriate BMPs.
13. One of the first construction activities shall be placing permanent and/or temporary erosion and sediment control measures around the perimeter of the project or initial work areas to protect the project water resources.
14. Permanent erosion and sediment control measures shall be installed in a manner that will provide long-term sediment and erosion control to prevent excess sediment from entering waters of the state.
15. Permanent erosion and sediment control measures shall be installed at the earliest practicable time consistent with good construction practices and shall be maintained as necessary throughout project operation.
16. Top elevations of bank stabilization shall be such that adequate freeboard is provided to protect from erosion at 100-year design flood elevation.
17. Structural fill or bank protection shall consist of materials that are placed and maintained to withstand predictable high flows in the waters of the state.
18. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
19. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
20. Maximum fill slopes shall be such that material is structurally stable once placed and does not slough into the stream channel during construction, during periods prior to revegetation, or after vegetation is established.
21. To the extent reasonable and cost-effective, the activity submitted for certification shall be designed to minimize subsequent maintenance.

## ***Turbidity***

22. Sediment resulting from this activity must be mitigated to prevent violations of the turbidity standard as stipulated under the Idaho WQS (IDAPA 58.01.02). *Any violation of this standard must be reported to the DEQ regional office immediately.*
23. All practical BMPs on disturbed banks and within the waters of the state must be implemented to minimize turbidity. Visual observation is acceptable to determine whether BMPs are functioning properly. If a plume is observed, the project may be causing an exceedance of WQS and the permittee must inspect the condition of the project's BMPs. If the BMPs appear to be functioning to their fullest capability, then the permittee must modify the activity or implement additional BMPs (this may also include modifying existing BMPs).

***In-water Work***

24. Work in open water is to be kept at a minimum and only when necessary. Equipment shall work from an upland site to minimize disturbance of waters of the state. If this is not practicable, appropriate measures must be taken to ensure disturbance to the waters of the state is minimized.
25. Construction affecting the bed or banks shall take place only during periods of low flow.
26. Fording of the channel is not permitted.
27. Work in waters of the state shall be restricted to areas specified in the application.
28. Measures shall be taken to prevent wet concrete from entering into waters of the state when placed in forms and/or from truck washing.

***Vegetation Protection and Restoration***

29. Disturbance of existing native vegetation shall be kept to a minimum.
30. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
31. Fencing and other barriers should be used to mark the construction areas.

***Dredge Material Management***

32. Upland disposal of dredged material must be done in a manner that prevents the material from re-entering waters of the state.

**Right to Appeal Final Certification**

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the “Rules of Administrative Procedure before the Board of Environmental Quality” (IDAPA 58.01.23), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to Julia Achabal, Boise Regional Office, 373-0321 or [Julia.Achabal@deq.idaho.gov](mailto:Julia.Achabal@deq.idaho.gov).

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Aaron Scheff  
Regional Administrator  
Boise Regional Office